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To Whom it May Concern

**Submission on the Restitution of Land Rights Amendment Bill**

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## **1. Introduction**

The Land Access Movement of South Africa (LAMOSA) is an independent federation of rural Community Based Organisations (CBOs) advocating for land and agrarian rights, and substantive democracy through facilitating Sustainable Development. It first saw the light of day as the Transvaal Land Restoration Committee (TRAC) in 1991, with its founding members drawn from dispossessed communities in the former Transvaal region.

LAMOSA works in partnership with government and Civil Society Organisations (CSOs) in four provinces – Limpopo, Mpumalanga, Northwest and Gauteng. In addition it cooperates with other national and international Non Governmental Organisations (NGOs).

The organisation has expanded its membership from those who were dispossessed to include other landless communities, including farm dwellers. LAMOSA advocates for a legislative and policy framework that seeks to undo the unequal society created by racist measures emanating from our colonial and Apartheid past.

LAMOSA has therefore worked with rural women in tribal areas, and have been part of South Africa's land reform programme since its inception, and our intention is to make analysis of the paper before us versus the real challenges on the ground, compare and come up with recommendation towards a progressive white paper on Rural Development.

## **2. Background on Restitution of Land Rights Amendment Bill**

On May 23<sup>rd</sup>, 2013, the government introduced the Restitution of Land Rights Amendment Bill (hereafter the Bill). At first glance, the bill seemed generous. Minister Nkwinti and other officials proclaimed that the Bill would help people like the Khoi-San who were disposed of their land before 1913. The bill's official summary says it will re-open the window for land claims in order to allow people dispossessed of their land under past racial discrimination to put in a claim until 2018. In addition, the bill provides that people who lost land under Betterment can put in restitution claims, which was excluded by the Act.

“These aims are all laudable.

However, these promises are unlikely to be realised. In this context, the Bill is shown up to be a populist tool, aimed at drawing votes before elections rather than solving substantial problems in terms of land reform”.

Contrary to public statements by Zuma and Nkwinti, the Bill does not give opportunities for descendants of the Khoi, San, and other pre-1913 claimants to put in land claims. The Bill's memo makes mention that this may happen some way, sometime in the future. The buzz around the bill has been very ambiguous in this regard – is this about votes and not solutions.

### **3. Concerns within the Current Amendment Bill**

To start with, Restitution of Land Rights Amendment Bill is supposed to review the current state of play with regard to restitution, backed by proper data. It should be able to provide a review of what has worked and what has not worked, where and possibly why. Outstanding problems should be identified based on that analysis. Without this kind of background and review, it is impossible to have an informed public debate on the way forward. All Restitution of Land Rights Amendment Bill does is to state some broad historical facts about apartheid and land redistribution. It offers no insights as to what has been tried in the two decades post apartheid, the successes and failures of policies and what needs to change.

- First, it does not address pre-1913 claims, contrary to the spin government has generated around it.
- Secondly, it sneaks in the conditionality clauses on cost, and on the claimants' ability to use the land "productively" in the other policies for example, The Recapitalisation Policy. This conditionality was scratched out of the initial document after a public outcry in the first submission. The original grants that was awarded to restitution has been erased, and this conditionality waters down the constitutionally entrenched right to restitution, which is framed in terms of redress for past discriminatory practices. Apart from undermining the right to restitution, this introduces scope for arbitrary and corrupt decision-making processes.
- The bill risks opening the floodgates for traditional leaders to claim vast swathes of land, which they could rule as their personal fiefdoms, given other laws and recent statements by Minister of Rural Development and Land Reform Gugile Nkwinti.
- The other concern with the bill concerns its timing and intent during the lead up to next year's elections. It is well known that land reform in South Africa is in a shambles, failing hopelessly in meeting its targets. This failure is particularly embarrassing to government during the centenary year of the notorious 1913 Natives Land Act. We need to situate the bill in the context of pre-election promises to various constituencies.

### **4. Key issues for rural people that the Amendment bill fails to tackle include:**

#### **4.1 Turn-a-round time for claims and finalizing the existing claims**

Why is government refusing to honour signed agreements and court orders that give effect to the right to restitution set out in Section 25(7) of the Constitution? The simple answer is because of pressure from traditional leaders. This is clearly set out in a 2012 affidavit by a senior government official in the Cata litigation. She said "[d]espite the

optimism with which the settlement agreement was done [the process has now] encountered fierce objections by the traditional leaders who state that the agreements transferring ownership of rural land to community-based associations undermined their authority". She added that "the Minister has issued an instruction that ...discussions for the implementation of CLaRA are still continuing and no state land [should] be transferred until this process has been finalised". This despite the fact that CLaRA, or the Communal Land Rights Act of 2004, was struck down by the Constitutional Court in 2010.

#### **4.2 Gender equity and equality**

- How will the bill ensure gender equity in restoration, access and control and ownership? The myth of discriminating daughters in law as beneficiaries, how is the Commission going to rectify that. The Restitution of land rights act clearly defines the meaning of the descendant, yet this definition has been misinterpreted and excluded many widows and orphans.

#### **4.3 Institutional and policy coordination**

- What would be the sanctions to development of gazetted claims which contributes to inflation of land prices? What is the plan to de Gazette the gazetted claims? How is Restitution of Land Rights Amendment Bill linked to other developmental challenges such as climate change, water resources, rural development, education and training etc?

#### **4.4 Financing**

The Restitution of land rights amendment bill has taken out all the post settlement support grants and has replaced it with the Recapitalization policy. The budgeted presented by the Chief Land Claims Commissioner clearly indicates capacity problems in terms of adequate costing which will further frustrate the programme. What finances, resources and programmes will be created to ensure economic empowerment of rural communities through Restitution?

#### **4.5 Land equity and redistribution, protecting community resource rights**

- How does this Amendment Bill address the population growth and ensure landless rural descendants will get land? Will it allow Redistribution programmes to automatically kick in to address the population versus land carrying capacity?
- How will the act balance the demands of development with community resource rights?
- How is the bill going to address the rights of farm dwellers already residing in the claimed land, previous act did not address that and as a result claimants are stocked with overlapping rights and burden of giving recognition to this group.

## **5. Recommendations**

- 5.1 The consultation and debates should include other departments such as Agriculture, Water and Forestry, Housing, Local Government as well as Mineral rights and Energy to address the issue of Comprehensive pre and post settlement support for the land claimants.
- 5.2 The Department can in the mean time use section 6(2) to make recommendations to the Minister for those betterment claims and for people who did not have an opportunity to lodge their claims, taking it case by case. A separate process for betterment claims can be established and other programmers of land reform can be used to address betterment redress.
- 5.3 Reconcile the contradictions in the matrix of policies within the Departments
- 5.4 The bill need to impose sanctions to parties that contravenes the act, all gazette claims cannot be rezoned or developed.
- 5.5 Adequate Institutional support need to be established. Capacity of the officials need to be looked into, we cannot afford careless mistakes.

## **6. Conclusion**

The Restitution of Land Rights amendment Bill cannot be adopted in its current form, it must be totally dismissed and be re drafted to address concerns raised by community submissions and summarized above.

The process for consultation must be given sufficient time, at least a year to make sure that people's views are heard and to allow learning from the past experiences. For e.g.

- It should be a given that all the restitution claims automatically acquire post settlement support to start utilising the land
- All the lodged claims must be finalised before receiving new claims, the current Act allows for the commission to Review their decision should there be a new claim on the already finalised claim.
- Department and the Commission need to go through an internal evaluation or skills audit to address capacity gaps in terms of financial and Human resources to be able to tackle the new applications better.
- Department of Rural Development and Land Reform have to devise a strategy to protect tenure rights if communities leaving in the communal areas and on private farms, available avenues such as Interim Protection of Land Rights Acts (IPIIRA) could be re enforced to empower rural community and strengthen their citizen's rights against unscrupulous companies.

We need an assurance that Government is not only trying to make politically sweeping statements at the expense of the communities. In the past, we saw The Department of Rural Development and Land Reform refusing to transfer title to at least 34 CPAs where restitution awards and signed agreements are in place. This has caused major suffering and division as CPA members question what happened to the land and grants they were promised. The government recently ignored a court order that compelled it to transfer land title to the Cata CPA by May 20<sup>th</sup>. If we are serious about addressing the past injustices and the skewed patterns of ownership, then we need to do it in a way that can promote rural democracy and peace. And finally the people's landholding option choice must be respected. If people if choose CPA model as an alternative land holding option their choice should be supported.

I THANK YOU



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